Response to Comment(s)
On Rule in Development

Even though no formal comments were received through the "Rules In Development" website, a comment email was sent to the department's Air Pollution Control Program permit staff on the afternoon of the last day of the 60-day comment period. Fortunately the recipient of the email forwarded this comment on to the rulemaking unit which is the formal contact for comments posted on the website.

Rule number: 10 CSR 10-6.065

Rule title: Operating Permits

Type of rulemaking: Amendment

Response to Comments From Missouri Ag Industries, Inc. (Mo-ag):

Comment 1. Mo-Ag suggested amending the introductory paragraph under subsection (1)(A) of the proposed rule that recognizes that some facilities are exempt from the rule.

Response 1. Subsection (1)(C) of the proposed rule provides for specific exemptions to the rule, and therefore amending subsection (1)(A) is unnecessary.

Comment 2. Mo-Ag noted that the exemption subsection in this rule states that "Emissions from exempt installations and emission units shall be considered when determining if the installation is a part 70 or intermediate installation". Mo-Ag suggests that this implies that exempt installations and emission units shall not be considered when determining applicability for basic sources, and that the rule language should be amended to clarify this conclusion.

Response 2. The intent is that all emissions should be considered when determining permit applicability. The language in subsection (1)(C) and paragraph (3)(A)4. is a remnant of the federal operating permit model rules. It has always been the practice to consider all emissions when determining applicability for all permit types unless the activity is explicitly excluded by rule. For instance, Subsection (2)(B) of this rule spells out that fugitive emissions are not to be considered in determining applicability for basic sources.

Comment 3. Mo-Ag provided comments on paragraph (4)(B)5. of this rule, and suggested that the Missouri Department of Natural Resources clarify the meaning of "accepted". Mo-Ag questioned whether this means that the installation is deemed "permitted" and asked what happens if the department's Air Pollution Control Program rejects a notification letter. Mo-Ag suggested that these installations should be deemed "permitted" and asked that the language be clarified.

Response 3. If the Air Program rejects a notification the facility is not deemed "permitted", but the installation will have met their obligation to submit, and therefore will not be subject to enforcement action. The only notifications that will be rejected are those that could be classified as "bad faith efforts", those that are atrociously incomplete. In those cases the Air Program would send a letter explaining that the notification is insufficient. It would only be after repeated attempts at correcting a failure to file situation that the Air Program would consider entering into an enforcement process.

Comment 4: Mo-Ag commented that the development of an equipment log required under subsection (4)(H) would be very burdensome for certain installations. Most installations do not have records of when these grandfathered pieces of equipment were installed, and much of the equipment lacks identification numbers as required in the equipment log. Mo-Ag requests that the department delete the installation equipment log requirement.

Response 4. The primary reason for requiring an equipment log is to aid inspectors and field staff in identifying the existing equipment on site. This equipment log is much less stringent than the previous basic operating permit requirements. Under the existing regulation, installations are required to identify all equipment and all of the regulations, permit limitations, or any other legal conditions associated with those units. In addition, all of these sources report their annual emissions on their Emission Inventory Questionnaires. Often these sources group units together. These groupings would be acceptable in the notification as well..

Comment 5. Mo-Ag commented that the term "constrained" as used in subsection (4)(L) is vague and not well defined and suggested that language be clarified.

Response 5. The phrase containing the word "constrained" is repeated in the part 70 portion of the rule as well, and was used here to maintain consistency. In addition, following its initial use, the word "constrained" is clarified in the next sentence and this language has not caused previous confusion.

Comment 6. Mo-Ag suggested a minor reorganization suggestion for subsection (4)(L).

Response 6. After review of this suggestion, it was determined that the organization currently in the rule development meets rule format requirements and is acceptable.

Comment 7. Mo-Ag suggested that notice of off-permit changes not be required "contemporaneous" with the change, but instead within a short defined period. Mo-Ag also asked about the requirement that the permitee keep records describing changes "that result in emission of a regulated air pollutant." Are these changes new emissions, increased or decreased emissions?

Response 7. The intent of this notification of off-permit changes is to make sure that state officials are aware of these changes. Of primary concern are the effects these changes will have on the emissions from an installation. There is no reason why

notification cannot be made at the same time that the installation is being modified. Permitting should be viewed as being a regular part of doing business. It is important to note that these off-permit changes are not expected to be frequent occurrences. The use of the word contemporaneous is consistent with language currently used in this rule. In regard to the question about what type of activity changes require records, any of the changes mentioned may trigger the recordkeeping.

Comment 8. Mo-Ag noted that subsection (4)(T) of the proposed rule provides a mechanism for the director to make a recommendation to the Commission to require a more detailed operating permit, and recommended that this be changed to allow the Air Program director to unilaterally make this decision. Therefore, if the installation disagrees with the decision, an appeal before the Missouri Air Conservation Commission is available. As the subsection is written, appeals would go to circuit court.

Response 8. After further consideration, a situation in which a more detailed operating permit would be needed for basic sources is not expected to occur. Therefore, instead of moving the decision point from the Air Commission to the director, the Air Program intends to remove this entire requirement and eliminate this subsection.